

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CHARLES DUANE BROWN,                     )  
  )  
                          Plaintiff,                )  
  )  
                          v.                         )       1:14CV645  
  )  
SHERIFF TERRY JOHNSON,                 )  
  )  
  )  
                          Defendant(s).)

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. The filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* submitted, with sufficient information completed or signed by Plaintiff, to permit review. Plaintiff submitted an *in forma pauperis* application but did not disclose the amount of deposits into his prisoner trust fund account during the last six months as required on the form.
2. Plaintiff has not named proper defendants. Plaintiff names Sheriff Terry Johnson as the only Defendant, but does not make any allegations against Johnson or even mention him in the factual portion of his Complaint. Plaintiff must name the persons who are actually responsible for the alleged violations of his constitutional rights.

3. Plaintiff's claims are somewhat unclear, but it appears that he seeks to have the Court intervene in an ongoing state criminal matter. If so, this is not a proper claim under § 1983. Instead, he would have to raise such a claim in a petition for habeas corpus under 28 U.S.C. § 2241. Plaintiff should also be aware that it is not ordinarily proper for the Court to intervene in pending state court criminal matters.
4. Plaintiff seeks his release from jail as relief. This is not an appropriate form of relief under § 1983.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 or § 2241 forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 and § 2241 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Federal Rule of Civil Procedure 8 (*i.e.*, Sections (a) & (d)).

*In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 and § 2241 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Federal Rule of Civil Procedure 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 or § 2241 forms, which corrects the defects cited above.

This, the 7<sup>th</sup> day of January, 2015.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge